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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-219364

DATE: August 23, 1985

MATTER OF: Julie Research Laboratories, Inc.

DIGEST:

1. Protest that sole-source award of contract was improper is untimely where filed after the date for receipt of initial proposals and approximately 2 months after date of publication in Commerce Business Daily of notice that sole-source negotiations were being conducted.
2. Untimely protest of sole-source procurement does not present significant issue within meaning of Bid Protest Regulations since GAO has issued numerous decisions setting forth basic principles governing such procurements.

Julie Research Laboratories, Inc. protests the sole-source award of a contract for components to automate an existing manual calibration system manufactured by Valhalla Scientific, Inc. to Valhalla under request for proposals (RFP) No. N00167-85-R-0064, issued by the Navy. Julie contends that the agency provided it and other firms allegedly capable of supplying these items no opportunity to compete under the RFP. We dismiss the protest as untimely.

Notice of sole-source negotiations with Valhalla was synopsisized in the Commerce Business Daily (CBD) on February 19, 1985. The synopsis stated that the proposed contract was for "Calibration components to automate an existing manual calibration system," and included an agency contact point and the solicitation number. The synopsis also referenced note 22 which is published in the CBD the first working day of each week. The note stated that the government intended to negotiate with only one source but

invited interested persons to identify their interest and capability so that the government could consider a competitive procurement for the items. The synopsis further explained that negotiations would not be started until at least 30 days after the date the synopsis was published.

The agency issued the solicitation on March 20 with the closing date for receipt set for April 22. Two firms responded to the CBD synopsis by requesting copies of the solicitation. Julie was not one of those firms.

On April 15, Julie "became aware" of the solicitation and called the contract negotiator. According to the agency's memorandum of the phone call, Julie inquired whether the agency had a requirement for an automatic calibration system and when he was informed that only components were being solicited, Julie indicated that his system was superior and cheaper than the system which the agency possessed. On April 17, Julie called the contracting officer and, according to the agency records, reiterated his claim to have a better system. The contracting officer read Julie the solicitation's schedule and part of the statement of work and informed Julie that the procurement would remain a sole-source one until the agency received a response to CBD note 22 which convinced it otherwise. Julie did not submit either a response to the CBD notice or a proposal by the April 22 closing date. Instead, it protested to our Office on May 1.^{1/}

Our Bid Protest Regulations require that protests based upon alleged solicitation improprieties which are apparent before the closing date for receipt of proposals must be filed prior to that date. 4 C.F.R. § 21.2(a)(1) (1985). We view a protest of the sole-source nature of a procurement to be a complaint against the solicitation. Lab Methods Corp., B-215526, July 17, 1984, 84-2 CPD ¶ 60.

^{1/} We did not actually receive the protest until June 5. Since, however, circumstances indicate that the protest actually may have been delivered to us on May 1 and misplaced, we are considering the protest as filed on May 1. See Julie Research Laboratories, B-219363, et al., July 3, 1985, 85-2 CPD ¶ ____.

Ordinarily, when a procuring agency publishes in the CBD a synopsis indicating that sole-source negotiations are contemplated, protesters, whether or not they actually see the synopsis, are charged with constructive notice of the announcement. Where the synopsis contains a closing date, any protest of the sole-source decision must be filed prior to closing. Detroit Broach and Machine--Reconsideration, B-213643.2, July 12, 1984, 84-2 CPD ¶ 43.

Here, the synopsis did not contain the actual date for receipt of proposals. It did, however, specify that expressions of interest must be submitted within 30 days. In any event, Julie states that it "became aware" of the procurement on April 15, and according to the agency, was informed on that date that the solicitation closed on April 22. We find that at the latest Julie should have been aware of both the sole-source nature of the procurement and of the closing date prior to April 22. See Micro-Mil, Inc., B-202703, May 1, 1981, 81-1 CPD ¶ 335. Thus, for our Office to consider Julie's protest timely, the firm must have filed a protest with the contracting agency prior to the date for receipt of proposals.

Although Julie characterizes the two phone conversations as an oral protest it does not dispute the agency's records of the conversations. Based on those records, Julie's inquiry was not a protest but merely a request for information and a generalized expression of its wish to supply the agency with its system, presumably to replace the existing Valhalla system.^{2/} See Lucco Art Studio, Inc., B-217422, Feb. 27, 1985, 85-1 CPD ¶ 249. Therefore, we are unable to conclude that Julie filed a protest with the contracting agency prior to the date for receipt of initial proposals. Since it did not protest to our Office until after the April 22 proposal receipt date and more than 2 months after publication of the CBD notice, the protest is untimely.

^{2/} According to the agency records, Julie admitted that it could not supply the components listed in the solicitation.

Julie argues that even if its protest is untimely it should be considered under the exception in our regulations which permits us to consider untimely protests for "good cause" shown. 4 C.F.R. § 21.2(c). In this regard, Julie maintains that our Office gives more consideration "to the split-second timing" of the protester than to the seriousness of the protest.

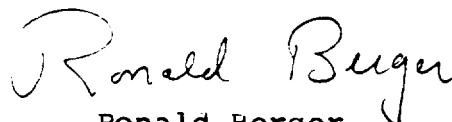
The good cause exception in our regulations is limited to circumstances where some compelling reason beyond the protester's control prevents the timely filing of a protest. Knox Mfg. Co.--Request for Reconsideration, B-218132.2, Mar. 6, 1985, 85-1 CPD ¶ 281. Julie has not offered any explanation of what prevented it from filing on time. Rather, it appears that Julie feels its protest raises a significant issue and thinks that we should consider its untimely protest under the regulatory exception which permits us to consider untimely protests that raise issues significant to the procurement system. See 4 C.F.R. § 21.2(c).

The significant issue exception is used where the subject matter of the protest evidences a matter of widespread interest or importance to the procurement community and the matter has not been considered on the merits in previous decisions. Detroit Broach and Machine, B-213643, Jan. 5, 1984, 84-1 CPD ¶ 55.

This protest does not fall within the exception, which we construe strictly to prevent our timeliness rules from becoming meaningless. The issue of whether a particular purchase should have been made by competitive procurement rather than through a sole-source award is not of sufficient interest to the community to invoke that exception. Detroit Broach and Machine, B-213643, *supra*; Kemp Industries, Inc., B-206653, Mar. 19, 1982, 82-1 CPD ¶ 262. We have numerous decisions setting forth the basic principles governing sole-source procurements under the law applicable to this procurement. See Amray, Inc., B-209186, June 30, 1983, 83-2 CPD 45; Taylor Associates, B-206070.3, Apr. 22, 1983, 83-1 CPD ¶ 431. Thus, while we recognize the importance of the matter to the protester, we do not think the propriety of this sole-source procurement is a significant issue under our Bid Protest Regulations.

Finally, Julie contends that our timeliness rules are merely a "dodge" so that we can avoid our responsibility to review protests. Our regulations are designed to provide all parties a fair opportunity to present their cases and to permit a reasonably speedy resolution of these matters without unduly disrupting the government's procurement process. International Development Institute, B-218048.2, Feb. 11, 1985, 85-1 CPD ¶ 179. Further, the regulations are intended to enable our Office or the contracting agency to decide an issue while it is still practicable to take effective action where the circumstances warrant. Dynamics Research Corp., B-213273, Dec. 28, 1983, 84-1 CPD ¶ 33. Here, for example, a protest before the date for receipt of initial proposals would have permitted review and if the protest had merit, the possible participation of the protester in the procurement or the cancellation of the sole-source procurement before the prospective contractor had undergone the expense of preparing a proposal. In short, the timeliness rules serve an important and valid purpose, and had Julie complied with them, its protest would have received full consideration.

The protest is dismissed.



Ronald Berger
Deputy Associate
General Counsel